

**SALT LAKE COUNTY
LAW ENFORCEMENT
OFFICER INVOLVED
CRITICAL INCIDENT
INVESTIGATIVE PROTOCOL**

August 2015

PREAMBLE

The Law Enforcement Officer Involved Critical Incident Investigative Protocol (this “Protocol”) has been established to provide uniform procedures and mutually agreed-upon rules. The goal and purpose of the Protocol investigation is to ensure that every investigation of an officer-involved critical incident (“OICI”) is conducted professionally, thoroughly, and impartially.

The Protocol procedures and rules cannot anticipate every possible circumstance that might occur. Therefore, anytime a Protocol investigation is being conducted, the procedures outlined in this Protocol may be modified by the Advisory Board according to the procedures set forth in this Protocol. Unassisted interviews of witnesses or other involved parties by Protocol investigators, without prior mutual agreement by the Protocol Task Force tend to undermine the purpose and usefulness of the Protocol and shall not occur.

When used correctly, this Protocol creates an independent, transparent, objective and trustworthy process from which meaningful and valuable conclusions can be drawn. This Protocol is for the community, its citizens, the agencies who serve them, and the police officers who, often in a split second decision, take action in the exercise of government power that results in an OICI. Each deserves the best investigation. This Protocol strives to achieve that ideal.

This Protocol is not a statute, ordinance, or regulation and is not intended to increase the civil or criminal liability of member agencies or their employees and it shall not be construed as creating any mandatory obligation to, or on behalf of, third parties.

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I. DEFINITIONS

- A. “Administrative Investigators”** means those investigators assigned by the Employing Agency to conduct the administrative or internal investigation of the OICI.
- B. “Advisory Board”** means the Advisory Board that shall govern the administration of the Protocol.
- C. “Contributing Officer”** means an Officer whose conduct is directly related to, or contributes to, the cause of the OICI.
- D. “Criminal Investigators”** means those investigators assigned to the Task Force to investigate criminal conduct on the part of the Subject.
- E. “Dangerous weapon”** is a firearm or an object¹ that in the manner of its use or intended use is capable of causing death or serious bodily injury.
 - 1. The following factors are used in determining whether any object, other than a firearm, is a dangerous weapon:
 - (a) the location and circumstances in which the object was used or possessed;
 - (b) the primary purpose for which the object was made;
 - (c) the character of the wound, if any, produced by the object’s use;
 - (d) the manner in which the object was used;
 - (e) whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety; and the lawful purposes for which the object may be used.
- F. “Deadly Force”** means force that creates or is capable of creating a substantial risk of causing death or serious bodily harm to a person, or force used with the purpose of causing a substantial risk of death or serious bodily injury to a person. The discharge of a firearm for training purposes or lawfully destroying an animal is not deadly force unless such discharge results in the death of or injury to a person.
- G. “District Attorney”** means the Salt Lake County District Attorney.
- H. “Employing Agency”** is the agency employing an Officer who is alleged to have caused or contributed to the OICI.

¹ The use of instrumentalities other than firearms may constitute the deployment of deadly force. Police cars have been held to be instruments of deadly force. Some lower courts are split on the question of whether police dogs constitute deadly force. For this protocol, if the use of a vehicle, police dog, or other instrumentality results in the death or serious bodily injury of a Subject, the use of that force would constitute the invocation of this protocol.

- I. “Guarded Access”** means that a member of the Protocol Task Force must be present when a Liaison Officer or any other member of the Employing Agency has contact with the Involved or Contributing Officer(s).
- J. “Injury”** means Serious Bodily Injury.
- K. “Investigating Agency”** means the Protocol Task Force composed of Officers from multiple law enforcement agencies.
- L. “Involved Officer”** means an Officer who causes the OICI.
- M. “Law Enforcement Employee”:** This Protocol applies to defined employees and to certain other people affiliated with Participating Agencies as follows:
1. Full-time, part-time, and hourly sworn Officers; whether on or off-duty and acting for a law enforcement or a private purpose at the time of the OICI.
 2. Full-time, non-sworn employees on-duty at the time of the OICI.
 3. Part-time, non-sworn employees on-duty at the time of the OICI.
 4. Reserve Officers on-duty at the time of the OICI.
 5. Temporary law enforcement employees and law enforcement agency volunteers, whether paid or unpaid, on-duty at the time of the OICI. This category includes informants when they are working under direct control and supervision of an Officer.
- N. “Liaison Officer”** An officer from the Employing Agency who is not a member of the Protocol Task force but who serves as a liaison on the Protocol Task Force for a specific OICI investigation to facilitate communication between the Protocol Task Force and the Employing Agency. The Liaison Officer is not assigned investigative functions, but can respond to requests from the Protocol Task Force Coordinator and Protocol Task Force Leader and can be present during interviews. The Liaison Officer shall have Guarded Access at all times to the Involved or Contributing Officer.
- O. “Officer”** means a law enforcement officer as defined in U.C.A. § 53-13-103.
- P. “Officer-involved critical incident” (“OICI”)** is any of the following:
1. the use of a Dangerous Weapon by an Officer against a person that causes injury to any person;
 2. a fatal injury to any person, except the Officer, resulting from the use of a motor vehicle by an Officer;
 3. the death of a person who is in law enforcement custody, but not including deaths that are the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person’s death; or

4. a fatal injury to a person resulting from the efforts of an Officer attempting to prevent a person's escape from custody, make an arrest, or otherwise gain physical control of a person.
- Q. "Participating Agency"** means a law enforcement agency that agrees to be subject to and participate in the Protocol as set forth herein, and has indicated such commitment to participation by signing the Protocol.
- R. "Protocol Task Force"** means OICI Protocol Task Force personnel from Participating Agencies designated with investigation duties led by the Protocol Task Force Coordinator and Team Leader under the terms and provisions of this OICI Protocol.
- S. "Protocol Task Force Coordinator"** means the person who (1) is the primary contact for initial notification of an OICI; (2) oversees and coordinates the assignment of the Protocol Task Force Team for every OICI; (3) monitors the investigation by the Protocol Task Force Team; (4) facilitates the assignment of additional resources and personnel as necessary to aid the Protocol Task Force Team Leader.
- T. "Protocol Task Force Teams"** means the investigative teams designated by the Protocol Task Force Coordinator to investigate an OICI.
- U. "Protocol Task Force Team Leader"** means a leader of a Protocol Task Force Team.
- V. "Serious Bodily Injury"** means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.
- W. "Subject"** means the person (injured or not), who caused the Law Enforcement Employee to use Deadly Force, and who may or may not have criminal culpability related to the OICI; or one against whom the force under investigation was applied.
- X. "Venue Agency"** means the law enforcement agency or agencies having jurisdiction where the OICI occurs. If a Venue Agency is also an Employing Agency, the Venue Agency cannot lead the Protocol Investigation or employ the Protocol Task Force Coordinator.

II. TASK FORCE FORMATION, STRUCTURE AND GOVERNANCE

- A. ADVISORY BOARD.** An Advisory Board will govern the administration of the Protocol, and shall be structured as follows:
1. The Advisory Board shall include the District Attorney or designee thereof and a designee from each Participating Agency.

2. The Chair of the Advisory Board shall serve a two (2) year term and shall be elected by a two-thirds vote of the Advisory Board.
3. The Advisory Board shall meet at least twice in a calendar year or more often as necessary to review the status of the Protocol, including, without limitation, to: address issues, amend or modify the Protocol, report on the transpired Protocol investigations, discuss and plan training, and discuss and approve allocation of resources.
4. The Advisory Board shall receive input from each Participating Agency regarding the names of personnel and the description of assets, equipment, and other resources dedicated to the Protocol Task Force.
5. The Advisory Board will select the Protocol Task Force Coordinator and Protocol Task Force Team Leaders, seeking the very best and most qualified person to fill each of these critical positions. Although the Advisory Board will endeavor to reach unanimity as to who will be designated to fill these key positions, the position of Protocol Task Force Coordinator and Protocol Task Force Team Leader, including alternates for these positions, shall require the approval of at least seventy-five percent (75%) of the Advisory Board.
 - (a) The Advisory Board will select a Protocol Task Force Coordinator who is the most qualified of those considered for the position.
 - (b) The Advisory Board will also select Protocol Task Force Team Leaders and co-leaders.
 - (c) The Advisory Board will select alternates for the positions of Protocol Task Force Coordinator, Protocol Task Force Team Leader and Protocol Task Force Co-Leaders in order for substitutions to be made in the event of conflicts.
6. The Advisory Board will select and designate the remaining personnel assigned to the Protocol Task Force by the approval of at least two-thirds of the Advisory Board.
7. Decisions made by the Advisory Board, including but not limited to changes to the Protocol, shall only be made upon the approval of at least two-thirds of the Advisory Board, with notice of all approved changes to the Protocol sent to the Chief Executive Officers of all Participating Agencies and the District Attorney.

Task

- B. PROTOCOL TASK FORCE COORDINATOR.** The Protocol Task Force Coordinator provides leadership, organization and structure to the OICI investigation. Unresolved questions of protocol and procedure are resolved by the Protocol Task Force Coordinator. The Protocol Task Force Coordinator's leadership provides the Protocol Task Force and the OICI investigation with independence from conflicts of interest.

1. The assignment of Protocol Task Force Coordinator may rotate through the various Participating Agencies on an annual basis or on a schedule determined by the Advisory Board. Protocol Task Force Coordinator assignments are made upon the approval of seventy-five percent (75%) of the Advisory Council.
2. A back up Protocol Task Force Coordinator is appointed upon the approval of seventy-five percent (75%) to serve as a Protocol Task Force Coordinator in the event that the Protocol Task Force investigates an OICI involving the Protocol Task Force Coordinator's Employing Agency or the designated Protocol Task Force Coordinator is unavailable to respond.
3. The Protocol Task Force Coordinator determines and assigns duties to each member of the Protocol Task Force for each OICI investigation.
4. As the OICI investigation proceeds, the Protocol Task Force Coordinator is responsible to:
 - (a) Monitor OICI investigation, organization and progression.
 - (b) Keep Venue Agency administrators, Employing Agency administrators, the District Attorney, and/or their liaisons informed of OICI investigation status.
 - (c) Ensure adequate resources are available and utilized for witness interviews, evidence collection, documentation, and other investigation functions.
 - (d) Mobilize the Protocol Task Force Teams.
 - (e) Call for additional personnel, resources and assets, or release unnecessary personnel, resources and assets as warranted.
 - (f) Assign personnel to compile a report to be prepared wherein the OICI, the investigation of the OICI, and the findings related thereto are set forth and presented to the District Attorney.
 - (g) Designate an agency for the storage and retention of evidence if the Venue Agency's evidence room cannot be used for the storage and retention of evidence.

C. PROTOCOL TASK FORCE. The Protocol Task Force shall be established and agreed upon by the approval of two-thirds of the Advisory Board and shall be governed as follows:

1. Participating Agencies shall nominate personnel and designate equipment, assets and resources to the Advisory Board.
2. The composition of the Protocol Task Force is approved by the approval of a two-thirds vote of the Advisory Board.
3. It is anticipated that each member assigned to the Protocol Task Force will serve for a period of at least two years.

4. An Employing Agency (even if it is not a Participating Agency) shall designate a Liaison Officer who serves on the Protocol Task Force for a specific OICI investigation to facilitate communication between the Protocol Task Force and the Employing Agency. The Liaison Officer shall not be assigned investigative functions.
5. Each Participating Agency acknowledges that training in OICI investigations techniques is essential for the best outcome of any investigation and as such will commit adequate resources for its members as necessary to insure such training.

III. INVOCATION OF PROTOCOL

A. MANDATORY INVOCATION. Upon the occurrence of an OICI, invocation of this Protocol is mandatory. In accordance with UTAH CODE ANN. § 76-2-408, when an OICI occurs:

1. Upon receiving notice of an OICI, the Venue Agency shall, as soon as practical, notify the District Attorney; and
2. The chief executive of the Venue Agency and the District Attorney shall:
 - (a) jointly designate the Protocol Task Force as the Investigating Agency; and
 - (b) notify the Protocol Task Force Coordinator, who shall not be employed by the Employing Agency, and who will activate the appropriate Protocol Task Force Team.
3. If a Protocol Task Force is not available, the chief executive of the Venue Agency and the District Attorney shall jointly designate another law enforcement agency to conduct the Protocol Investigation.
4. If multiple Venue Agencies are involved in the OICI, each Venue Agency and the District Attorney will jointly designate the Protocol Task Force as the Investigating Agency, notify the Protocol Task Force Coordinator, or, alternatively, jointly designate another Law Enforcement Agency to conduct the Protocol Investigation.

B. OPTIONAL INVOCATION. Each Participating Agency, in the capacity of a Venue Agency or Employing Agency, may itself invoke this Protocol upon the occurrence of any incident involving a Law Enforcement Employee in which the Employing Agency deems an outside investigation is appropriate.

1. The Protocol Task Force Coordinator may decline participation in an optional OICI Protocol invocation.
2. The District Attorney has discretion to decline participation in an optional OICI Protocol invocation.

3. In lieu of an optional invocation of the Protocol, the Involved Agency may investigate the matter itself.
- C. NOTIFICATIONS:** Upon identifying an occurrence as an OICI, the Venue Agency shall make the following notifications as promptly as possible:
1. Intra-agency Officers, as required by that agency's procedures.
 2. The Employing Agency, if applicable and if not yet aware.
 3. The District Attorney's Office. (Refer to the on-call list for which investigator to notify.)
 4. The Medical Examiner's Office or investigator, when a death has occurred.

IV. INVESTIGATIVE AGENCIES, FORMATS, AND RESPONSIBILITIES

- A. OICI INVESTIGATION FORMATS.** In order to recognize and accommodate the various interests and rules of law that are involved in an OICI, OICI investigations may be performed under three separate formats: (i) criminal investigation, (ii) Protocol investigation and (iii) administrative investigation. Administrative investigations are optional to the Employing Agency.
1. **Criminal Investigation.** The Venue Agency shall be the lead on the criminal investigation of the Subject; however, the Venue Agency may designate the Protocol Task Force as the lead on the criminal investigation if the Venue Agency deems such designation warranted.
 2. **Protocol Investigation.** The Protocol Task Force shall be the lead on the Protocol investigations. The Venue Agency shall assign a Liaison Officer to participate in the Protocol investigation.
 - (a) The designated Protocol Task Force Team is in charge of any OICI investigation, but may use the assistance of the Venue Agency Officers at the discretion of the Protocol Task Force Leader. Any assistance provided to the investigation by the Employing Agency should include notations in reports describing which agency made the request and to whom the evidence or reports were given.
 - (b) The Employing Agency shall assign a Liaison Officer, and the Protocol Task Force will work with this Liaison Officer to the greatest extent possible to keep the Liaison Officer informed of the investigation and cooperate with the Liaison Officer on agency specific accommodations to the Involved Officer, including, but not limited to, notification of

support members, family, clergy, medical and mental health, labor representatives and legal representatives.

(c) The District Attorney's authorized investigator, representative or liaison shall be entitled to participate in the Protocol Task Force.

3. **Administrative Investigation of Law Enforcement Employee:** The administrative investigation is conducted by the Employing Agency and addresses policy and procedural issues of the Employing Agency. While the Criminal Investigators and Protocol Task Force investigators do not direct the Administrative Investigation, their results are of interest to the Employing Agency for its internal use and those results are fully available for that purpose.

4. **Investigation Priority.** While both the criminal and administrative investigations are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the criminal investigation to have priority. It is intended that this prioritization will preclude competition between the two investigative formats for access to witnesses, physical evidence, and the involved parties, and will prevent the criminal investigation from being compromised by an untimely exercise of the Employing Agency's control of the scene, evidence, or witnesses.

B. LACK OF RESOURCES. If a Venue Agency lacks sufficient resources or believes it cannot properly conduct a criminal investigation related to an OICI, it has two options:

1. Obtain criminal investigative assistance from one or more Law Enforcement Agencies; or
2. Relinquish criminal investigative responsibility to the Protocol Task Force or another Participating Agency.

C. SCENE SECURITY: Each Participating Agency has initial responsibility for securing the crime scene(s) within its jurisdiction. Ultimate scene security is the responsibility of the Venue Agency under the direction of the Protocol Task Force Coordinator.

D. CRIMINALISTICS. The Task Force Criminalistics Unit has the responsibility for documenting the scene(s) and for the collection, preservation and analysis of physical evidence for the criminal investigation of the Subject and the Protocol investigation of the Law Enforcement Employee. Administrative Investigators have access to all collected evidence and tests.

1. If an employee of a Criminalistics Unit is involved in an OICI as an actor or as a Subject, that Criminalistics Unit will be disqualified from assisting in the Protocol investigation of the OICI. The Venue Agency would have the

responsibility to arrange for assistance from another Participating Agency laboratory.

2. Prior to final relinquishment of the scene, the Criminal Investigators and Protocol Task Force investigators will provide the Administrative Investigators with an opportunity to assess the need for further evidence processing.

E. SUBJECT HOSPITALIZATION. If a Subject is transported to a hospital, an Officer (preferably from the Venue Agency), should accompany the Subject in order to:

1. Locate, preserve, safeguard, and maintain the custody chain on physical evidence.
2. Obtain a dying declaration, a spontaneous statement, a contemporaneous statement, or a statement of then-existing or previous mental or physical state.
3. Maintain custody if the Subject has been arrested.
4. Identify witnesses and medical personnel.
5. Be available for contacts with the Subject's family, if appropriate.

F. DANGEROUS WEAPON CUSTODY.

1. If a Law Enforcement Employee still has possession of a Dangerous Weapon used in the OICI, the supervising Officer at the scene shall promptly but discreetly (i.e., in private) obtain possession of the Dangerous Weapon. If the Protocol investigators determine that the gun belt is necessary to the investigation, the supervising Officer shall arrange to secure the gun belt at the same time the weapon is taken. Side arms must not be removed from their holster unless circumstances dictate otherwise. Side arms of Law Enforcement Employees should be replaced as quickly as possible if the Officer so wishes, unless circumstances dictate otherwise.
2. In Dangerous Weapon OICI's, the supervising Officer shall check the firearms of all Officers present at the time of the OICI and ensure that all discharged firearms are identified by owner and serial number. The supervising Officer shall document the condition of the inspected firearms.

Collected Dangerous Weapons shall be placed in the evidence room of the Participating Agency that has been assigned to assist the Protocol Task Force in the OICI investigation until all appropriate testing is accomplished.

G. TRANSPORTING AND SEQUESTERING INVOLVED OFFICERS:

1. Officers who were present at the time of the OICI, whether actors or witnesses, will be relieved of their duties as promptly as possible and shall, if possible, be individually transported to their office and sequestered.
2. Involved Officers shall not discuss their use of Deadly Force or their involvement in an OICI amongst themselves, fellow Officers, or others (except their legal representatives).
3. Involved Officers may give statements regarding public safety issues or the circumstances of the criminal investigation of the Subject.
4. Involved Officers may call their spouses or family and notify them of their well-being.

V. CUSTODIAL DEATHS

- A. INVOCATION.** This Protocol shall be invoked for all in custody deaths and those incidents where the person in custody is transported to the hospital in critical condition.
- B. ATTENDED DEATH.** A Subject who is physically in law enforcement or corrections custody is subject to the Protocol, unless it is an attended death. An attended death is when the death of the Subject was anticipated and the result of a medical condition while the Subject was under the care of a physician.
- C. CORRECTIONAL FACILITY OICI.** When the OICI related to an in-custody Subject occurs at a correctional facility or a law enforcement holding area, the Venue Agency is the agency having jurisdiction in that area and the correctional facility or law enforcement agency is the Employing Agency.
- D. OUTSIDE CORRECTIONAL FACILITY OICI.** When the incident related to an in-custody person occurs outside a correctional facility, the law enforcement agency having jurisdiction in the area will act as the Venue Agency and the Employing Agency is the agency that had custody of the person.
- E. CUSTODIAL DEATH SCENES:** When an OICI occurs in a correctional facility, a holding facility or other location and other inmates or persons may be witnesses, those inmates should be identified and if possible separated, pending interviews by the Protocol Task Force investigators.
- F. EXECUTION ORDERS.** If an in-custody death occurs as the result of a lawful execution order by a Utah court, this Protocol will not be invoked.

VI. INTERVIEWS

- A. **RIGHT TO COUNSEL.** Law Enforcement Employees have the same rights and privileges as citizens, including the right to consult with legal counsel prior to the interview and the right to have their lawyer present during the interview.
- B. **INVESTIGATOR PRESENCE DURING INTERVIEWS.** The interviews by Protocol Task Force investigators of Law Enforcement Employees, witnesses, and Subjects shall be conducted with all primary Protocol Task Force investigators present unless otherwise agreed upon prior to the interviews. This interview does not have to be conducted immediately but may occur at a later time giving the Officer a chance to meet with their legal representative.
- C. **MIRANDA.** If and when the Protocol interview becomes custodial, the *Miranda* admonition is applicable. However, if the Officer has his lawyer present at the interview, the *Miranda* admonition does not have to be given.
- D. **COOPERATION.** Agency policy and case law permit heads of law enforcement agencies to order their Officers to cooperate with criminal investigations being performed by other agencies. Failure to comply with such orders may result in insubordination. When applicable, interviewees may be advised of this provision. However, Officers will not be compelled by threats of administrative punitive action (or otherwise) to answer Protocol Task Force questions which could be self-incriminating.
- E. **INVOLVED OFFICER INTERVIEWS.** Interviews of Involved Officers will be conducted separately. Interviews will normally be recorded. Interviewees will be considered as witnesses unless the circumstances dictate otherwise.
- F. **CITIZEN WITNESS INTERVIEWS.** All citizen witnesses or involved individuals at the scene may be temporarily detained in order to gain control of the scene. Once the scene has been contained and any suspects have been taken into custody, all witnesses or other involved individuals who are questioned should be interviewed in a non-custodial setting, unless a material witness warrant has been obtained to acquire their attendance.

VII. INTOXICANT TESTING

- A. **TESTING OPTIONS.** Law Enforcement Employees have the same rights and privileges as citizens regarding intoxicant testing. When Protocol Task Force investigators determine that a Law Enforcement Employee's sobriety is relevant to the investigation, they have these options:
 - 1. Obtain a blood and/or urine sample by consent.
 - 2. Obtain a blood and/or urine sample incident to arrest.
 - 3. Obtain a search warrant.

4. If an arrestee refuses to comply with the request for a sample, attempts will be made to obtain the sample in accordance with case law.
- B. ADMINISTRATIVE INVESTIGATION TEST RESULTS.** Intoxicant test results obtained by Protocol Task Force investigators are available to Administrative Investigators.
- C. SAMPLE PRIORITY.** In the event Protocol Task Force investigators do not obtain blood and/or urine samples for testing, the Employing Agency may then seek to obtain samples; however, the Protocol Task Force investigators shall have the first opportunity to obtain blood and or urine samples.
- D. MISCELLANEOUS.**
1. Blood is best for alcohol testing, while urine is best for drug screening. Samples of both blood and urine should be obtained for the most complete results.
 2. Samples should be collected promptly after the OICI to obtain the most meaningful results.
 3. A Law Enforcement Employee may volunteer to provide blood and urine for testing even if Protocol Task Force and Administrative Investigators haven't obtained samples. Similarly, a person from whom Protocol Task Force or Administrative Investigators have obtained samples may request that another sample be taken for independent testing. Such a request will be honored; however, the person volunteering this sample is responsible for the expense of the test.

VIII. AUTOPSY

- A. PROTOCOL TASK FORCE ATTENDANCE.** The Venue Agency investigator from the Protocol Task Force will attend the autopsy unless otherwise agreed upon. The Medical Examiner performing the autopsy will receive a complete briefing prior to the examination, which briefing shall include all relevant information known at that time.
- B. PHYSICAL EVIDENCE.** When the Medical Examiner agrees, the Protocol Task Force investigator shall assume responsibility for documenting and collecting physical evidence.
- C. ATTENDANCE BY DECEDENT'S CRIMINOLOGIST.** Although the Medical Examiner has authority to determine who attends an autopsy, it is usually advisable to allow attendance by a recognized professional criminologist retained by representatives of the decedent, if such request has been expressed before the autopsy has begun.

IX. DISTRICT ATTORNEY'S OFFICE

A. DISTRICT ATTORNEY’S PARTICIPATION. The District Attorney's Office will participate in the Protocol investigation as follows:

1. The District Attorney has its own separate investigative authority. When deemed appropriate by the District Attorney, the District Attorney's Office may perform an independent investigation of the OICI.
2. If the Protocol investigation results in criminal charges against a Law Enforcement Employee, the affiant on the information filed by the District Attorney’s Office shall be the District Attorney investigator unless otherwise agreed upon by the Protocol Task Force.
3. In the event criminal charges are filed, the Protocol Task Force investigative team shall be dissolved and any additional follow-up investigation that is needed to prepare the case for trial shall be handled by the District Attorney’s Office. Any Officer assigned to the Protocol Task Force should make themselves available for trial preparation and court purposes.
4. The District Attorney will receive and review the findings of each OICI investigation conducted under this Protocol, unless an actual conflict of interest exists. If an actual conflict of interest exists, the District Attorney shall make a written explanation of the conflict and obtain the assistance of another prosecution entity capable of performing the duties and obligations of the District Attorney as set forth in this Protocol.
5. The District Attorney has the responsibility to determine whether an Involved Officer’s actions were “justified” under Utah law pursuant to U.C.A. 76-2-401 and 76-2-404.
6. When the Task Force Coordinator believes that the OICI investigation is complete, the Task Force Coordinator will schedule a briefing with the Employing Agency and also schedule a separate briefing with the District Attorney and present the findings of the OICI investigation.
7. The District Attorney and designated personnel will conduct an independent review of the OICI investigation. The District Attorney’s independent review will initially determine whether the OICI investigation provided enough information to determine “justification.” If the District Attorney believes additional information is required, the Task Force Coordinator will be notified and the matter will be referred back for further investigation.
8. Once a “justification” decision is reached, the District Attorney will summarize the OICI investigation and the findings thereof, and report the determination of “justification,” and the rationale for the determination. The District Attorney shall prepare a written summary letter containing the above

and deliver the letter to the Employing Agency. **This letter is not to be released to the public or press and is deemed to be only a draft.**

9. Upon receipt of the District Attorney's draft summary letter containing the "justification" determination, the Employing Agency will have five (5) working days to review and reply if necessary to the letter. The Employing Agency may also raise concerns or objections to the letter or portions thereof to the District Attorney. The District Attorney may make changes as appropriate and submit a final letter to the Employing Agency
10. After the Employing Agency has had 24 hours to review the final letter, the District Attorney shall release the letter to the public.
11. If an Involved Officer was "justified" in the use of Deadly Force, this legal defense prevents any further consideration by the District Attorney of criminal charges against an Involved Officer, and the OICI investigation and review are closed.
12. If the District Attorney determines the legal defense of "justification" does not apply to the Involved Officer, the District Attorney will thereafter consider whether sufficient information exists to determine whether, and if so which criminal charges against an Involved Officer are warranted. If the District Attorney determines insufficient information exists to screen charges, the District Attorney shall request a law enforcement agency to conduct a criminal investigation into the conduct. If the District Attorney determines that sufficient information exists to screen charges, the same standards, procedures, protocol and considerations which are applied to any criminal screening shall apply to the screening of criminal charges against an Involved Officer.
13. If the District Attorney's Office concludes that criminal charges are warranted against an Involved Officer, the District Attorney shall file criminal charges against an Involved Officer.
14. After a criminal charge is filed against an Involved Officer, any follow up and further investigative work shall be performed by and be the responsibility of the District Attorney's Office and agencies designated to assist.

X. REPORT DRAFTING

- A. **REPORT DRAFTING.** All reports will be forwarded to the Protocol Task Force Team Leader for coordination and insertion into the reporting format of the Protocol Task Force Team Leader. The Protocol Task Force Team Leader will decide which investigator is responsible for drafting a particular report. Protocol Task Force investigators should not draft more than one report on an interview or event. Protocol Task Force investigators should coordinate the drafting of all

reports and sign off on the accuracy of the report; however, the Protocol Task Force Team Leader is responsible for the final report. All Protocol Task Force investigators shall coordinate with the Protocol Task Force Team Leader to draft a final report that documents their participation in the investigation.

B. COMPLETION AND DISTRIBUTION OF REPORTS. Prompt completion and distribution of reports is essential. All agencies and investigators shall strive to complete and distribute a report within 30 days after an OICI.

C. ADMINISTRATIVE INVESTIGATION.

1. The Employing Agency shall control the reports and findings of the administrative investigation.
2. Interview statements, physical evidence, toxicology test results and investigative leads that are obtained by Administrative Investigators after ordering Law Enforcement Employees to cooperate shall not be revealed to Criminal Investigators or Protocol Task Force investigators without the approval of the District Attorney's Office.
3. Protocol Task Force investigators shall promptly and periodically brief the Administrative Investigator(s) regarding the progress of the Protocol investigation. The Administrative Investigators shall have access to briefings, the scene(s), physical evidence, reports, and interviewees' statements.

XI. NEWS MEDIA RELATIONS.

A. VENUE AGENCY RESPONSIBLE FOR PRESS RELEASES. The Venue Agency is responsible for issuing press releases about the OICI and its investigation. The Venue Agency public information officer (or the Venue Agency designate) should be kept informed regarding the details of the case in order to keep the news media informed.

B. EMPLOYING AGENCY PRESS RELEASES. If the Employing Agency is not also the Venue Agency, the Employing Agency should limit its comments to the following areas:

1. the employer-employee relationship; and
2. information that has been cleared for release by the Protocol Task Force.

C. RELEASE OF CERTAIN INFORMATION. If the Protocol Task Force investigators determine that the release of specific information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge about the hazards of releasing such information.

XII. ACCESS TO REPORTS AND EVIDENCE

- A. MATERIAL CREATED OR COLLECTED BY THE PROTOCOL TASK FORCE.** Material that is created or collected by, or at the request or direction of the Protocol Task Force investigators shall be made available in a timely manner to those agencies that have an interest in the investigation. Such material shall include written reports, access to the physical evidence, photographs, diagrams, and all recordings.
- B. EVIDENCE NO LONGER NEEDED: NOTIFICATION BY DISTRICT ATTORNEY.** When the District Attorney's Office concludes that the physical evidence collected for the Protocol investigation is no longer needed for criminal law purposes, the Employing Agency and the Venue Agency shall be notified of that decision so they can assume responsibility for preservation or disposal of such evidence as prescribed by law and departmental policy.
- C. Government Records Access and Management Act (GRAMA).** Records generated by the Protocol Task Force will be controlled by the Agency for whom the Protocol Task Force Team Leader is employed (i.e. the Investigating Agency).
1. During the OICI investigation, the Venue, Employing and Investigating agencies will coordinate all GRAMA requests for records relating to each OICI so as to avoid duplicative requests for the same records and to avoid interference with the ongoing OICI investigation.
 2. Although the Investigating Agency will be deemed to be the agency that controls the records related to the OICI, all audio and video records created through the use of body-worn cameras (BWCs), dashboard cameras, or other digital technology will be held and maintained by the agency that deployed the equipment. Copies of any such audio and/or video records will be provided to the Protocol Task Force Leader for inclusion in the final OICI investigative report.
 3. While the District Attorney's final letter containing the "justification" determination shall be released to the public pursuant to this Protocol Agreement, documents and records contained in the underlying OICI Protocol Task Force investigative file may be classified as public, private or protected on a case-by-case basis.

END OF PROTOCOL